COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| DENISE ANN SHOFFNER<br><br>COMPLAINANT | ) | |
| VS. | ) | CASE NO. 92-320 |
| NOLIN RURAL ELECTRIC COOPERATIVE CORPORATION<br><br>DEFENDANT | ) | |

O R D E R

On August 3, 1992, Denise Ann Shoffner filed a complaint against Nolin Rural Electric Cooperative Corporation ("Nolin RECC") to compel Nolin RECC to extend electric service to her home without first requiring payment of a construction fee for the extension and to impose such sanctions as are applicable for improper conduct toward Mrs. Shoffner on the part of Nolin RECC's management. The Commission, by Order of August 13, 1992, directed Nolin RECC to either satisfy the matters complained of in the complaint or file its written answer within 10 days of the date of the Order. On August 24, 1992, Nolin RECC filed its answer admitting its refusal to extend service to Mrs. Shoffner without payment of the construction fee, but stating affirmatively that its published tariffs and Commission regulations required such payment. The answer also denied any improper conduct on the part of its management toward Mrs. Shoffner. A hearing was held on the complaint before the Commission on October 7, 1992 at which

both parties appeared, but only Nolin RECC was represented by counsel.

## FINDINGS OF FACT

Nolin RECC is a cooperative corporation that owns and operates facilities used in the transmission and distribution of electricity to the public for compensation for lights, heat, power, and other uses. Its principal offices are located in Elizabethtown. Mrs. Shoffner is a customer of Nolin RECC who resides with her husband, Glen Shoffner, in Larue County.

On July 27, 1992, the Shoffners purchased a double-wide mobile home which they intended to establish as their residence on property they own in Larue County. The property is located in Nolin RECC's certified territory, but was not being served with electricity when Mrs. Shoffner applied to Nolin RECC for electric service. Mrs. Shoffner was advised by Nolin RECC that before electric service could be extended to her new home, she would have to pay a construction fee calculated according to Nolin RECC's published tariffs applicable to mobile homes. Mrs. Shoffner was further advised that the construction fee would be refunded in full over a four-year period in four annual equal installments provided she remained a customer for that period of time. Mrs. Shoffner objected arguing that the advance payment policy was not applicable because she and her husband intended to convert the "mobile home" into a permanent residential structure. When Nolin RECC refused to recognize that the structure would become a permanent residence, Mrs. Shoffner filed her complaint. After filing the complaint,

however, apparently to avoid any delay while this complaint was pending, the Shoffners paid Nolin RECC a construction fee of $1,019.00 to extend electric service to their home. Though not stated in their complaint, the Shoffners now seek to recover that payment.

Nolin RECC's extension policies are set forth in Section 33 of its published tariff on file with this Commission. That section provides that extensions of up to 150 feet from the nearest facility shall be made to mobile homes without charge. Extensions greater than 150 feet require an advance payment to cover the cost of construction. The advance payment is $50.00 for extensions not exceeding 300 feet, and $2.85 per foot for each additional foot in excess of 300 feet. The amounts advanced by the customer for extensions in excess of 300 feet are subject to refund over a four-year period in equal amounts for each year service continues. If service is discontinued during the four-year period, the customer forfeits any part of the advance payment that has not been refunded.

In calculating the advance payment for construction, Nolin RECC uses the shortest distance between the existing power line to the new service. Because the fee is based upon a fixed amount per foot, it does not necessarily reflect the actual cost of construction. In this case, although the Shoffners were charged $1,019.00 for the extension based on a measured distance of 640 feet from the existing power line, the actual cost of constructing the extension was $2,102.55. The additional amount was attributed

to several turns in the extension which added to the cost. Electric lines which run in a straight line are less costly to construct.

In determining whether a home is a "mobile home" within the meaning of its published tariff, Nolin RECC relies upon the definition found in KRS 219.320(3). That section of the statutes is part of the "Kentucky Mobile Home and Recreational Vehicle Park Act" and it defines a mobile home as:

> "Mobile home" means a transportable dwelling unit suitable for year round occupancy, which is manufactured on a chassis or undercarriage as an integral part thereof, containing facilities for water, sewage, bath, and electrical conveniences.

In addition, Nolin RECC also relies upon the definition of a mobile home found in Article 550 of the National Electric Code. Section 550-2 of that article defines a mobile home as:

> A factory-assembled structure or structures equipped with the necessary service connections and made so as to be readily moveable as a unit or units on its own running gear and designed to be used as a dwelling unit(s) without a permanent foundation.

In applying for service, Mrs. Shoffner maintained that her home is not a mobile home under either of these definitions because it is no longer readily moveable and is installed upon a permanent foundation.

To prepare their property for their new home, the Shoffners constructed a masonry foundation. This foundation consists of three layers of eight-inch concrete blocks and one top layer of four-inch blocks resting on a concrete footer poured in the ground. The concrete footer is two feet wide and one foot deep. The mobile

home is attached to the foundation by wire cables and by mortar. Utility lines for electric, water, and sewer service were run beneath the footer. Sewage from the mobile home is disposed of into a septic tank and system installed on the property. The wheels and axles used to move the home, together with the tongue used to connect the home to the tractor, have been removed and disposed of by the Shoffners. Additionally, the concrete blocks on three sides of the home have been or will be stuccoed, while soil and fill dirt will be used to cover the concrete blocks on the fourth side of the home as part of the property's landscaping.

Mrs. Shoffner also complains that she was treated rudely by management personnel of Nolin RECC while she was applying for service. This allegation was denied by Nolin RECC and, in particular, by the individuals involved.

## CONCLUSIONS OF LAW

### The Extension Policy

The primary issue presented is whether the extension to the Shoffner residence should be treated as a normal extension to a permanent structure as Mrs. Shoffner contends or, instead, as an extension to a mobile home as Nolin RECC contends. Normal extensions are subject to the provisions of 807 KAR 5:041, Section 11. Subsection (1) of that section provides in part:

> Normal extensions. An extension of 1,000 feet or less of a single phase line shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service. . . .

The Shoffner's property is approximately 640 feet from the existing utility lines. If the extension is considered a normal extension, the advance construction fee should not have been charged and the Shoffners would be entitled to a refund.

Extensions to mobile homes are covered by Section 12 of the regulation. Subsection (3) of that section provides in pertinent part as follows:

> For extensions greater than 300 feet and less than 1,000 feet from the nearest distribution line, the utility may charge an advance equal to reasonable costs incurred by it for that portion of service beyond 300 feet plus fifty (50) dollars. . . .
>
> > (a) This advance shall be refunded to the customer over a four (4) year period in equal amounts for each year service is continued. The customer advance for construction of fifty (50) dollars shall be added to the first of four (4) refunds.
> >
> > (b) If service is discontinued for a period of sixty (60) days, or the mobile home is removed and another does not take its place within sixty (60) days, or is not replaced by a permanent structure, the remainder of the advance shall be forfeited.

Therefore, if the extension to the Shoffner's property is considered an extension to a mobile home under Section 12, the advance construction fee charged by the utility properly complied with the regulation and is subject to refund only in accordance with the regulation.

The question presented then is when, if ever, does a mobile home become a permanent residence. Both parties agree that the structure purchased by the Shoffners can be removed from its present location by disconnecting the utilities, separating the two

sides, and reinstalling the wheels, axles, and tongue. In this regard, however, the Shoffners maintain that there is no difference between their home and a conventionally built home which can also be removed from its foundation and moved.

While Nolin RECC concedes that a conventional home, like a manufactured home, can be moved from one location to another, it maintains that the task of moving a conventional home is more complicated due to the difference in construction. A mobile home is designed for portability. It is built on a steel frame to which wheels, axles, and a tongue are readily attached. A conventional home, on the other hand, must be transported on another vehicle such as a lowboy or steel I-beams inserted beneath the structure. In addition, the utility fixtures on a mobile home are designed for ease in coupling and uncoupling from existing utilities. Thus, removing the Shoffner home from its present location would take approximately one day, while removing a conventional home from a similar site would take considerably longer.

The position taken by the Shoffners finds support in a decision by the former Court of Appeals in Foos v. Engle, 295 Ky. 114, 174 S.W.2d 5 (1943). This was an action to enjoin the owner of five lots in the subdivision from maintaining a "trailer camp" on her property. The action was brought by other property owners in the subdivision who maintained that establishing a trailer park would violate a covenant that restricted the use of the property to "improvements [which]. . . when erected shall be used for residence

purposes only, . . . " Id. at 7. The trial court granted the injunction and the owner of the lots appealed.

The Court of Appeals, in affirming the injunction, held:

> While "trailers" are aptly described as "little houses on wheels," they are not "erected" within the meaning of the restriction, which refers in ordinary parlance to a residence to be more or less permanent, and hence, attached to the soil.

The court though went on to state by way of dictum the following:

> We do not mean to say, however, that if the trailers were dismounted from their wheels, or otherwise rendered not readily movable, and allowed to remain on the lots for a sufficient length of time to indicate their use as vehicles has been abandoned, this Court would hold that they were not residences within the meaning of the restriction referred to.

Id. at 9. Thus, the Court recognized that for purposes of complying with a restrictive covenant against "trailers," mobile homes were capable of being converted into permanent structures that did not violate the restriction.

The Foos decision was later relied upon as authority by the Supreme Court in Chapman v. Bradshaw, Ky. 536 S.W.2d 447 (1976). This was an action by the owner of property in a subdivision to enjoin other owners of property in the same subdivision from placing mobile homes on their lots. The plaintiff maintained that placing mobile homes or house trailers in the subdivision violated a restrictive covenant which restricted the use of the lots to residences constructed on permanent foundations. In affirming the lower Court's decision that house trailers violated the restrictive covenant, the Court citing Foos v. Engle noted:

> House trailers or mobile homes, by definition, are houses on wheels. They do not have solid foundations. They are not "constructed" within the meaning of the restriction, which refers an ordinary parlance, to a building permanently attached to the realty. . . . Clearly, a "house trailer" violates the requirement that "* * * any building* * * that is constructed upon this land shall have a solid foundation* * *."

Id. at 448. Like the decision in the Foos case, this decision, while recognizing that mobile homes in their original form violate restrictive covenants against them, also recognized that mobile homes can be brought into compliance with those same restrictive covenants by permanently attaching them to real estate.

The position taken by the Kentucky Court is in accord with decisions in other states. For example, Your Home, Inc. v. City of Portland, 483 A.2d 735 (Me. 1984) involved an appeal from a city zoning board decision denying an application to develop a mobile home park in an area restricted by the city's zoning ordinance to one-family dwellings in detached buildings. In denying the application, the zoning board reasoned in part that mobile homes, by virtue of their mobility, were not buildings within the meaning of the ordinance. The Maine Court reversed the zoning board holding:

> To the extent that we said that relative permanence is a feature of residential dwellings, we qualified that by reference to the specific requirements applicable to stick-built houses: e.g., "a mobile used as a residence could come within this definition of a dwelling, particularly if installed on a foundation."
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> Granted, relative permanence is one factor locating a particular structure on the continuum running between a towable camper and a field-stone fortress. As such, it is within the purview of the Board's "inherent

> responsibility" to interpret the ordinance, . . . But it is not the only factor, nor is it even a precondition under the ordinance which nowhere uses the term. Other attributes of one-family dwellings in detached buildings, e.g. plumbing, wiring, heating and foundation must be considered. *The Board does* not have the discretion to construct a precondition for prefabricated homes that the ordinance does not require of others.

Id. at 738.

Similarly, in Sylvester v. Howland Tp. Bd. of Zoning Appeals, 518 N.E.2d 36 (Ohio App. 1986), the Ohio Court held that removing the wheels and springs from a mobile home and placing it on a concrete foundation qualified the home as a residential structure which did not violate a zoning prohibition against mobile homes. In so holding, the Court stated:

> [W]e conclude that the nature of a proposed residence structure is determined based on conditions existing at the situs of the political subdivision. Accordingly, in the instant cause, the nature of appellant's proposed residence structure should have been determined by the zoning inspector based upon its condition existing at the situs in Howland Township. If the mobility of the proposed residence does not exist at the situs of the political subdivision then said residence structure could not be classified as a mobile home.

Id. at 38. In its decision, the Court referred to an earlier unpublished opinion in Garland v. Emerine, (no citation), in which it noted that the approval or denial of an application from a mobile home owner should not be based on a structure's condition at the time of manufacture, but instead upon its condition at the situs where it is to be located.

The courts within this and other states have thus recognized that when a mobile home is rendered immobile by removal of its

wheels, axles, and tongue and by its permanent attachment to real estate, it ceases to be a "mobile home," at least for purposes of zoning and building restrictions. The question of portability as it relates to residential structures is also relevant to the Commission's regulations. Neither KRS Chapter 278 nor the Commission's regulations define what is meant by a mobile home. However, it is clear that Section 13 of 807 KAR 5:041 was promulgated to protect electric utilities from the risk of extending service to a mobile home which might later be removed from its location before the utility is fully able to recover the cost of constructing the extension. This regulation is of particular significance to a utility like Nolin RECC where approximately 50 percent of its new connections are to mobile homes. Thus, the portability of a structure has even more significance in determining if it is a "mobile home" under the regulation than it would have in making the same determination under a restrictive covenant or a planning and zoning statute where the primary purpose is to protect the aesthetic qualities of a neighborhood or subdivision.

Given the substantial changes made to the Shoffner's home, the removal of its wheels, axles, and tongue, and its attachment to a permanent masonry foundation, the residence is no longer a portable structure and should not be considered a "mobile home" within the meaning of Section 13 of 807 KAR 5:041. Therefore, the extension to the home should be treated as a normal extension under Section 11 of the regulation and Nolin RECC should refund the

construction fee which the Shoffners paid for the extension.

Management Behavior

It was clear at the hearing that each party felt strongly in their position. Apparently these beliefs led to heated discussions on the matter when they met. The immediate question, however, is whether the conduct of electric company representatives during these meetings is an issue that this Commission may resolve.

KRS 278.260(1) vests in the Commission "jurisdiction over complaints as to rates or service of any utility" (emphasis added). Service is defined by KRS 278.010(11) as "any practice. . . in any way relating to the service of any utility." Because customer relations relate to the quality of utility service, customer complaints about service are within the jurisdiction of this Commission.

The next question is whether Nolin RECC representatives should be sanctioned for their conduct. The evidence of rude behavior consists of Mrs. Shoffner's charges and Nolin RECC's denials. It is the classic example of one person's word against the other. Given the contentious nature of the dispute, it is reasonable to assume that the parties may not have been as polite to one another as they might normally have been. While utilities certainly have a duty to treat their customers with respect and courtesy, there is little evidence that officials of the utility acted with such impropriety as to warrant sanctions. Therefore, the complaint of improper behavior should be dismissed.

Based upon the foregoing findings of fact and conclusions of law and upon the entire record and this Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. Nolin RECC shall within 20 days from the date of this Order refund to Denise Shoffner and her husband, Glen Shoffner, the construction fee paid for the extension of electric service to their home.

2. The portion of the complaint by Denise Shoffner against Nolin RECC for improper behavior on the part of Nolin RECC's personnel be and is hereby dismissed.

Done at Frankfort, Kentucky, this 12th day of January, 1993.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Dissenting Opinion of Commissioner Robert M. Davis

I respectfully dissent from that portion of the Order which directs Nolin RECC to refund the extension fee. As noted by the majority, the purpose of Section 13 of 807 KAR 5:041 is to protect electric utilities from the risk involved in extending service to a mobile home which can be removed from a location before a utility can recover the cost of construction. This regulation is of particular significance to a utility like Nolin RECC where

approximately 50 percent of its new connections are to mobile homes.

The situation here is not unlike that presented in Clackamus County v. Dunham, 579 P.2d 223 (Or. 1978). This was an action to enjoin the owners of a double-wide mobile home from locating it in an area restricted to buildings used exclusively for single-family dwellings, but not "a trailer house." The zoning ordinance defined a trailer house as a "building designed in such a manner that it may be moved from one location to another." The owners of the structure contended that by removing the wheels, axles, and springs and placing it on a permanent foundation, it was no longer capable of moving from one location to another and was thereby converted from a "trailer house" to a permanent building.

The trial court granted the injunction, but a lower appellate court reversed. On appeal, the Supreme Court of Oregon reinstated the trial court's decree holding that the term "designed" as used in the ordinance's definition of a trailer house "refers to the design for manufacture of the building," Id. at 226. In the view of the Oregon Court, a structure designed and manufactured as a mobile home remains a mobile home under the ordinance, whether or not it retains its portability.

Although the Oregon decision rests largely on the court's interpretation of the meaning of the word "designed" in the definition of a mobile home, the court also rejected the owner's argument that the intended changes affected the portable nature of the structure. Instead, the court, in a footnote, made the following observation:

> It can be logically inferred that even if "designed" refers to installation, by defendant's own proof their mobile home was portable. Its installation, in defendant's own words, consisted of the following:
>
> > The unit was slid into place and bolted together and anchored down.
>
> Presumably, it could be moved from its present location to another by reversing the above process; i.e., removing the anchors, unbolting the units and sliding them out to be moved to another location. On the portability continuum, with a highway travel trailer on one end and a conventionally constructed house on the other, it is closer to the portability end of the continuum.

Id. at 226 n.8.

Although the Shoffners have made substantial changes to their property, the structure in which they reside was designed, constructed, and remains a mobile home. Its portability can essentially be restored by unbolting the two halves, reinstalling wheels, axles, and a tongue to its frame, and connecting the entire unit to a tractor for movement from its location. For these reasons, it falls within the purview of Section 13 and the refund should be denied except as provided in that section of the regulation.

Robert M. Davis
Commissioner
Kentucky Public Service Commission

ATTEST:

Executive Director